

## **402 KAR 3:010. Timber sales.**

RELATES TO: KRS 149.010, 149.020

STATUTORY AUTHORITY: KRS 149.010(2), 149.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.010(2) requires the director of the Division of Forestry, with the approval of the Secretary of the Energy and Environment Cabinet, to promulgate administrative regulations necessary to carry out the functions assigned to the cabinet. 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products thereon. This administrative regulation establishes the requirements of major and minor timber sales.

Section 1. Definitions. (1) "Director" means the director of the Division of Forestry.

(2) "Major timber sales" means sales of merchantable timber with a return of \$25,000 or more in cash receipts to the Division of Forestry.

(3) "Minor timber sales" means sales of merchantable timber with a return of less than \$25,000 in cash receipts to the Division of Forestry.

Section 2. Major Timber Sales from State Forests. Timber may be harvested from a state forest for sale pursuant to KRS 149.020. Major timber sales shall be conducted in accordance with the requirements of this section. (1) Advertisement.

(a) The Division of Forestry shall mail a timber sale packet to each prospective buyer a minimum of three (3) weeks before bid opening. The sale shall be advertised at least one (1) time in three (3) local newspapers or three times (3) in one (1) local newspaper.

(b) A timber sale packet shall be prepared for each sale and shall include a:

1. Timber Sale Prospectus, including pertinent details of the sale;
2. Bid for advertised timber;
3. Summary of Timber Marked if the trees are individually designated, or a Cruise Summary if it is a boundary sale;
4. Timber Sale Contract;
5. Map of the sale area; and
6. Self-addressed sealed bid envelope.

(2) Contract.

(a) Timber shall be sold by written timber sales contract. The terms shall be adequate in the judgment of the director to protect the interests of the Commonwealth.

1. The timber sale contract shall be awarded immediately after bid opening.
2. Full payment for the timber sold shall be submitted within five (5) working days of awarding the contract.

(b) A certified check, made payable to Kentucky State Treasurer in an amount not less than \$2,500 or more than ten (10) percent of the established minimum bid, shall be required as a sign of good faith to accompany each bid.

1. The bid shall be considered as part of the total sale price of the successful bidder.
2. Deposits of unsuccessful bidders shall be returned.

(c) As a guarantee of the performance of the terms of the contract, the successful bidder shall, within five (5) days of the date of the contract, deposit with the Division of Forestry a certified check as performance bond in the amount of not more than ten (10) percent of the established minimum bid, but not less than \$2,500.

1. In lieu of the posting of the certified check as a performance bond, the successful bidder may post a surety bond with surety satisfactory to the Division of Forestry.

2. The bond shall be held until the completion of the terms of the contract.

(3) Compliance.

(a) The timber purchaser shall be required to comply with all timber sale contract requirements.

1. During ongoing harvesting activities, the operation shall be inspected by the local state forest administrator at least once every two (2) weeks to access compliance and to be available to answer any questions the purchaser may have.

2. If the purchaser is found in non-compliance with the contract, then the purchaser shall be informed and told what corrective measures shall be taken.

(b) The timber purchaser shall be required to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(c) If the purchaser fails or refuses to comply with the direction given by the state forest administrator, then the operation shall be suspended or terminated in accordance with the timber sale contract.

(d) Upon satisfactory completion of all terms of the contract and payment of any damages incurred, the Division of Forestry shall release the purchaser's performance bond.

(4) Minimum Bid. A minimum acceptable bid shall be determined for each sale and shall be stated as a part of the timber sale packet advertisement.

(a) A guide for determining the minimum bid shall be calculated by indexing the current price of No. 1 common lumber for each species, multiplying by the general profit or risk percentage and commission for industry in the particular area of the sale, and subtracting average logging, milling and drying cost.

(b) The price of No. 2 common lumber may be substituted for No. 1 common lumber on low quality species.

(c) The director may adjust the minimum bid established in subsection (4) of this section, as necessary, based on the director's professional knowledge, general market conditions in the local area, and the special characteristic of the individual sale.

(5) Negotiated Sale. If bids are not received on an advertised tract of timber, the Division of Forestry, with the approval of the director, may negotiate the sale of the tract of timber if it is judged in the best interest of the Division of Forestry and the Commonwealth.

(a) Negotiated sales shall be for no less than the minimum bid.

(b) The contract shall be executed within six (6) months of the bid opening date.

Section 3. Minor Timber Sales from State Forests. (1) Timber may be harvested from a state forest for sale pursuant to KRS 149.020. Minor timber sales shall require:

(a) A performance bond of \$500 or five (5) percent of the winning bid amount, whichever is greater;

(b) Full payment for products and performance bonds, if necessary, to be made within five (5) working days of execution of the permit; and

(c) The timber purchaser to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(2) A potential buyer for minor timber sales shall notify the division and the sales shall be carried out under the supervision of the Division of Forestry.

(3) If time is insufficient, harvest or salvage operations in preparation for land use change as approved by the director of the Division of Forestry may exceed the \$25,000 maximum limitation. (11 Ky.R. 669; eff. 11-13-1984; 41 Ky.R. 2619; 42 Ky.R. 281; eff. 9-3-2015 44 Ky.R. 577, 922; eff. 11-2-2017.)